

Owensby, et al. vs. City of Cincinnati  
November 6, 2003

DAVID WILLIAM HUNTER, JR.

1

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

- - - - -  
ESTATE OF ROGER D. :  
OWENSBY JR., et al., :  
 :  
Plaintiffs, : Case No. 01-CV-769  
vs. : (Judge S. A. Spiegel)  
 :  
CITY OF CINCINNATI, : VOLUME I  
et al., :  
 :  
Defendants. :  
- - - - -

Videotaped deposition of DAVID WILLIAM

HUNTER JR., a witness herein, called by the  
  
plaintiffs for cross-examination, pursuant to the  
  
Federal Rules of Civil Procedure, taken before me,  
  
Wendy Davies Welsh, a Registered Diplomate Reporter  
and Notary Public in and for the State of Ohio, at  
  
the offices of Helmer, Martins & Morgan Co. LPA,  
  
1900 Fourth & Walnut Centre, 105 East Fourth Street,  
  
Cincinnati, Ohio, on Thursday, November 6, 2003, at  
  
2:43 p.m.

Owensby, et al. vs. City of Cincinnati  
November 6, 2003

DAVID WILLIAM HUNTER, JR.

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<p>1 APPEARANCES:</p> <p>2 On behalf of the Plaintiffs:</p> <p>3 Paul B. Martins, Esq. Don Stiens, Esq. 4 Frederick M. Morgan Jr., Esq. Helmer, Martins &amp; Morgan Co. LPA 5 Suite 1900, Fourth &amp; Walnut Centre 105 East Fourth Street 6 Cincinnati, Ohio 45202 Phone: (513) 421-2400</p> <p>7 John J. Helbling, Esq. 8 The Helbling Law Firm, L.L.C. 3672 Springdale Road 9 Cincinnati, Ohio 45251 Phone: (513) 923-9740</p> <p>10 On behalf of the Defendants City of Golf Manor, 11 Stephen Tilley, Roby Heiland and Chris Campbell:</p> <p>12 Wilson G. Weisenfelder Jr., Esq.. 13 Rendigs, Fry, Kiely &amp; Dennis 900 Fourth &amp; Vine Tower 14 One West Fourth Street Cincinnati, Ohio 45202-3688 15 Phone: (513) 381-9200</p> <p>16 On behalf of the Defendants City of Cincinnati, 17 Darren Sellers, Jason Hodge:</p> <p>18 Geri Hernandez Geiler, Esq. Assistant City Solicitor and 19 Julie F. Bissinger, Esq. Chief Counsel 20 Department of Law Room 214, City Hall 21 801 Plum Street Cincinnati, Ohio 45202 22 Phone: (513) 352-3346</p> <p>23</p> <p>24</p>	<p>1 Federal Rules of Civil Procedure, may be taken at 2 this time by the notary; that said deposition may be 3 reduced to writing in stenotype by the notary, whose 4 notes may then be transcribed out of the presence of 5 the witness; and that proof of the official 6 character and qualifications of the notary is 7 expressly waived.</p> <p>8</p> <p>9</p> <p>10 I N D E X</p> <p>11 Examination by: Page</p> <p>12 Mr. Martins . . . . . 5</p> <p>13</p> <p>14</p> <p>15 E X H I B I T S</p> <p>16 Page</p> <p>17</p> <p>18 Deposition Exhibit 6A . . . . . 89 Deposition Exhibit 54 . . . . . 29 19 Deposition Exhibit 55 . . . . . 43 Deposition Exhibit 56 . . . . . 62 20 Deposition Exhibit 57 . . . . . 64 Deposition Exhibit 58 . . . . . 67</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
Page 3	Page 5
<p>1 APPEARANCES (Continued):</p> <p>2 On behalf of the Defendants Robert B. Jorg, 3 Patrick Caton, Jason Hodge, Victor Spellman and Darren Sellers:</p> <p>4 Donald E. Hardin, Esq. Hardin, Lefton, Lazarus &amp; Marks, LLC 5 915 Cincinnati Club Building 30 Garfield Place 6 Cincinnati, Ohio 45202 Phone: (513) 721-7300</p> <p>7 On behalf of the David William Hunter Jr.:</p> <p>8 Jay Clark, Esq. 9 114 East 9th Street Suite 400 10 Cincinnati, Ohio 45202 Phone (513) 587-2887</p> <p>11 Also present:</p> <p>12 Richard W. Grubb, Videographer</p> <p>13 Lisa Danstrom, Law Clerk 14 Helmer, Martins &amp; Morgan Co., L.P.A.</p> <p>15 Mr. Roger Owensby</p> <p>16 Mrs. Brenda Owensby</p> <p>17</p> <p>18</p> <p>19</p> <p>20 S T I P U L A T I O N S</p> <p>21 It is stipulated by and among counsel for the 22 respective parties that the deposition of DAVID 23 WILLIAM HUNTER JR., a witness herein, called by the 24 plaintiffs for cross-examination, pursuant to the</p>	<p>1 VIDEOGRAPHER: Time is 2:43 p.m. The date 2 is November the 6th. The year is 2003.</p> <p>3 If you'd please swear the witness, ma'am.</p> <p>4 DAVID WILLIAM HUNTER JR.</p> <p>5 being by me first duly cautioned and sworn, deposes 6 and says as follows:</p> <p>7 VIDEOGRAPHER: We're on the record, Mr. 8 Martins. This is videotape number 1, sir.</p> <p>9 CROSS-EXAMINATION</p> <p>10 BY MR. MARTINS:</p> <p>11 Q. Sir, would you state for the record your 12 full name, please.</p> <p>13 A. David William Hunter Jr.</p> <p>14 Q. And your age?</p> <p>15 A. 36.</p> <p>16 Q. Date of birth?</p> <p>17 A. 5/20/67.</p> <p>18 Q. What is your height?</p> <p>19 A. 5' 7."</p> <p>20 Q. And on November 7th of 2000 what was your 21 weight?</p> <p>22 A. Approximately 175.</p> <p>23 Q. Have you ever had your deposition taken 24 before?</p>

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(800) 578-1542 \* MERIT \* (513) 381-8228

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1 A. Well --  
2 Q. Did you want to say something?  
3 A. It was not -- it was not a set -- like  
4 a -- like a -- just one building. It was like  
5 buildings. It was --  
6 Q. Okay.  
7 A. You know, it was -- it was like two or  
8 three like together, but you can go through the  
9 courtyard and then you can come around, and there's  
10 like a building here on the right (indicating).  
11 That's the way Curtis went, Officer Walker. And  
12 then I was going to cut through.  
13 Q. All right. At some point, then, you  
14 folk-- you and Officer Walker split up and you start  
15 to go your way and he goes his, right?  
16 A. Yes.  
17 Q. At that point someone says something to  
18 warn the two individuals; is that right?  
19 A. Yes.  
20 Q. That's the next thing that happens?  
21 A. Yes.  
22 Q. Okay. And that person, if I'm  
23 understanding you correctly, was Mr. Owensby?  
24 A. Yes.

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1 Q. Are you sure of that?  
2 A. Yes.  
3 Q. What is the best of your recollection of  
4 what Mr. Owensby said?  
5 A. It was, The boys or Five-oh.  
6 Q. Say that again.  
7 A. It was either, The boys or Five-oh.  
8 Q. And in response to what -- could you see  
9 the two individuals at the time Mr. Owensby said  
10 this?  
11 A. They would -- they were just -- as he said  
12 it, they were just leaving out of my view.  
13 Q. Did you see -- so then you could not see  
14 what, if anything, they did in response?  
15 A. Oh. Ran.  
16 Q. You did see that?  
17 A. Yes. Uh-huh.  
18 Q. Okay. Do you know if Mr. Owensby said  
19 that toward them or was saying it to someone else?  
20 A. He's saying it toward them, because he  
21 turned to them and said it, in their direction.  
22 Q. Do you know where Officer Walker was at  
23 the time?  
24 A. No.

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1 Q. Do you know if the individuals started  
2 running because of what Mr. Owensby said or because  
3 they saw a uniformed officer?  
4 A. Beca--  
5 MR. HARDIN: Objection.  
6 You may answer.  
7 A. Because of what Mr. Owensby said. Because  
8 when that happened, Officer Walker didn't have  
9 enough time to get around. So they -- they had --  
10 they had -- they -- they couldn't have possibly even  
11 seen him yet.  
12 Q. But as I understand it, Mr. Owensby was  
13 not one of the four individuals that you and Officer  
14 Jorg had observed conducting drug activity at the  
15 phone booth?  
16 A. That's correct.  
17 Q. He was just somebody that you happened  
18 upon as you were going around the building?  
19 A. Yes.  
20 Q. At that point, as I understand it, you  
21 walk up to Mr. Owensby and put your left hand on his  
22 shoulder?  
23 A. Yes.  
24 Q. What shoulder did you put it on?

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1 A. On his left shoulder.  
2 Q. Were you facing him face to face or did  
3 you come up from behind?  
4 A. Walking to his right, right beside him.  
5 Q. So you put your left arm -- you're --  
6 you're to his -- his right and you put your left  
7 hand on his left shoulder?  
8 A. Yes.  
9 Q. And you say "What's up?" And he says,  
10 "What's up?" And you say, you know, You can't be  
11 doing that, or something like that, right?  
12 A. Yes.  
13 Q. And he said, What do you -- What do you  
14 mean or what. And you said, What you just did. Is  
15 that right?  
16 A. Yes.  
17 Q. And then you started to reach in your  
18 shirt to pull your badge out, which was hanging on a  
19 chain around your neck?  
20 A. Yes.  
21 Q. Do you know whether or not you got the  
22 badge all the way out before Mr. Owensby started to  
23 run?  
24 A. Yes, I got it out.

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1 letting them know that we were there.  
2 Q. How -- how far was he from you when he  
3 said that?  
4 A. About, hmm, maybe from here to that wall  
5 (indicating).  
6 Q. What, ten feet?  
7 A. Oh, more than that.  
8 Q. More?  
9 A. Maybe --  
10 Q. 20 feet?  
11 A. Maybe. Maybe 20 feet. I don't know  
12 exactly.  
13 Q. All right. When you had walked up to Mr.  
14 Owensby, put your arm -- your left hand on his left  
15 shoulder, around him, when you were talking to him,  
16 were you looking at him?  
17 A. Directly at him, yes.  
18 Q. Did you notice if he had any facial hair?  
19 A. If he did, it was like real light. I  
20 don't remember having like a full beard or full  
21 mustache or anything.  
22 Q. Did he have the -- did he have -- how was  
23 his hair? Was it in dreadlocks, was it short-cut?  
24 How -- how was it?

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1 A. Like a short afro.  
2 Q. At that point, as I understand your  
3 testimony, you then return to Officer Jorg, tell him  
4 what happened, right?  
5 A. Uh-huh. Yes.  
6 Q. And maybe -- maybe you've already answered  
7 this, but do you recall whether or not Officer  
8 Walker joined you and Officer Jorg?  
9 A. I don't recall if he came back over there.  
10 Q. Do you recall who of the two people that  
11 were arrested, who was cited, their -- their names?  
12 A. I don't remember their names.  
13 Q. Let me show you -- let me show you what's  
14 previously been marked as Exhibit 6. These are  
15 two -- Exhibit 6 are two arrest and investigation  
16 reports. The first one is for a Jaysen Hill and the  
17 second is for a Jarvis Nixon.  
18 You see the arrest location is the Sam's  
19 Carry Out address of 2092 Seymour Avenue and the  
20 arresting officer is Jorg, with your name also  
21 listed. Do you see that?  
22 A. Yes.  
23 Q. Are these the two individuals that Officer  
24 Jorg arrested --

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1 A. Yes.  
2 Q. -- on that day?  
3 A. Yes.  
4 Q. Do you see that with respect to Jaysen  
5 Hill he is charged with criminal trespass and an  
6 open container?  
7 A. Yes.  
8 Q. Is there any reason why there's no charge  
9 of trafficking --  
10 A. Yes.  
11 Q. -- or any kind of drug activity?  
12 A. Yes.  
13 Q. Why?  
14 A. Because we didn't recover the drugs.  
15 Q. Did you recover any money, any large sums  
16 of money on these people out of these drug deals?  
17 A. I didn't.  
18 THE REPORTER: I'm sorry?  
19 THE WITNESS: I did not.  
20 Q. Do you know whether Officer Jorg did?  
21 A. Not to my knowledge he didn't.  
22 Q. So based on what you found on these  
23 individuals -- well, let's talk about the second  
24 one. Mr. Nixon is cited with criminal trespass.

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1 Same thing, there were no -- no drugs and no large  
2 sums of money found, correct?  
3 A. That's correct.  
4 Q. Based on what you found at the scene when  
5 you got there, there was no evidence of drug  
6 activity taking place, was there?  
7 A. Are you talking about after the fact?  
8 Q. When -- when you're -- based on the arrest  
9 and what you found on the person of these  
10 individuals.  
11 A. Okay. What we observed to put us there  
12 went with the two that got away.  
13 Q. Okay. That's what you believe?  
14 A. That's what I believe.  
15 Q. Let me show you what I'm going to mark as  
16 Exhibit 6A.  
17 (Deposition Exhibit 6A  
was marked for identi-  
18 fication.)  
19 Q. You see Exhibit 6A is an arrest and  
20 investigation report for one Dominic Peterson, same  
21 location, same date, same time. And the person is  
22 searched by Officer Walker, and this person is  
23 charged with criminal trespass. Was Mr. Peterson  
24 also involved in this?

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<p>1 A. No. Jorg marked all of these when he</p> <p>2 filled out the --</p> <p>3 Q. Do you recall -- do you --</p> <p>4 A. -- the arrest slips.</p> <p>5 Q. Do you recall any discussion between you</p> <p>6 and Officer Jorg as to who was going to go to court?</p> <p>7 A. No.</p> <p>8 Can I add something to this?</p> <p>9 Q. Sure.</p> <p>10 A. It's not directly related to this</p> <p>11 particular thing, but when this incident happened,</p> <p>12 after the night of November 7th, 2000, Officer Jorg</p> <p>13 and Officer Caton were going around saying, that</p> <p>14 same night, that the -- that Mr. Owensby was wanted</p> <p>15 for assault on a PO and obstructing.</p> <p>16 He ran from me. It was basically my</p> <p>17 investigation that day. That night and from there</p> <p>18 on I always said, had this tragedy not happened, the</p> <p>19 only charges I was going to place on him was</p> <p>20 obstruction and jaywalking. And the jaywalking is</p> <p>21 because he -- I chased him through a crosswalk,</p> <p>22 around a car. And obstructing is for warning the --</p> <p>23 the individuals of our presence.</p> <p>24 And that goes back to what I was telling</p>	<p>1 "I didn't do anything, I didn't do nothing, I didn't</p> <p>2 do nothing." That's why I felt like he was just</p> <p>3 trying to basically get away. He -- he wasn't try</p> <p>4 to hurt me.</p> <p>5 Q. When you put your arm around Mr. Owensby,</p> <p>6 he didn't know that you were a police officer,</p> <p>7 right?</p> <p>8 A. No.</p> <p>9 Q. Based on your training, was that an</p> <p>10 assault on Mr. Owensby?</p> <p>11 A. No.</p> <p>12 Q. Why not?</p> <p>13 A. Because I didn't strike him, I didn't -- I</p> <p>14 didn't cause or attempt to cause or knowingly</p> <p>15 attempt to cause him any physical harm.</p> <p>16 Q. And was -- you've already indicated when</p> <p>17 Mr. Owensby tried to push away, he wasn't trying to</p> <p>18 strike you?</p> <p>19 A. No.</p> <p>20 Q. And he wasn't trying to cause you any</p> <p>21 harm?</p> <p>22 A. No.</p> <p>23 Q. When -- when you Mace Mr. Owensby and</p> <p>24 the -- the -- the blowback that you described, did</p>
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<p>1 you about different officers and officer discretion</p> <p>2 and different styles. I wouldn't have placed a</p> <p>3 criminal trespass. If, for whatever reason, I</p> <p>4 didn't get the drugs and the money to make my case,</p> <p>5 even though we set there and we observed them, we</p> <p>6 watched them, if I couldn't make it, you know, I try</p> <p>7 again another day, the next time.</p> <p>8 Same way with Mr. Owensby. He pushed me</p> <p>9 to flee. He didn't strike me or -- I didn't -- I</p> <p>10 wasn't under the impression that he was trying to</p> <p>11 harm -- or cause me harm. Therefore, I would not</p> <p>12 have charged him with felon-- with assault on a PO,</p> <p>13 with assault on a police officer. But they would</p> <p>14 have. That's the difference between this and that.</p> <p>15 That -- I'm trying to show you the --</p> <p>16 Q. Right.</p> <p>17 A. Okay.</p> <p>18 Q. Thank you.</p> <p>19 A. You're welcome.</p> <p>20 Q. Do you think -- was the push a result of</p> <p>21 you having your hand and arm around his shoulder?</p> <p>22 MR. HARDIN: Objection.</p> <p>23 A. It was when I identified myself as a</p> <p>24 police officer. And he pushed me and kept saying,</p>	<p>1 you then file some sort of report about deploying</p> <p>2 your Mace?</p> <p>3 A. No.</p> <p>4 Q. I thought that earlier today you had</p> <p>5 indicated that when Mace is used, you have to --</p> <p>6 A. If you actually Mace --</p> <p>7 Q. -- the officer has to --</p> <p>8 A. Yeah, if you actually Mace somebody. I</p> <p>9 didn't get -- I didn't get to Mace him.</p> <p>10 Q. How do you know the Mace didn't get to</p> <p>11 him?</p> <p>12 A. I don't. I don't. I don't know.</p> <p>13 Q. Okay.</p> <p>14 A. You're right. You're right. I don't</p> <p>15 know. But I don't think it did, in my opinion.</p> <p>16 Q. What color was the sweat shirt, the -- the</p> <p>17 hooded sweat shirt?</p> <p>18 A. Dark color. Dark blue or black.</p> <p>19 Q. In the radio transmission or the</p> <p>20 transcript of -- well, let me show you what's</p> <p>21 previously been marked as Exhibit 7. This is a</p> <p>22 transcription of the radio traffic on September 27,</p> <p>23 2000. And what I want to direct your attention</p> <p>24 to -- are you -- are you -- first of all, are you</p>

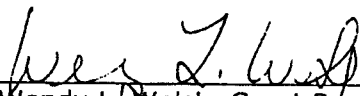
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AFFIDAVIT

- - -

STATE OF OHIO :  
COUNTY OF HAMILTON : SS  
:

I, Wendy L. Welsh, Notary Public in and for the State of Ohio, do hereby state that the transcript of the deposition of DAVID WILLIAM HUNTER, JR., deponent herein, having been submitted to said deponent for review and signature, has not been signed within the thirty (30) day period allowed under the Federal Rules; said deposition to now have the same force and effect as though signed.

  
Wendy L. Welsh, Court Reporter

Sworn to before me this 27<sup>th</sup> day of January, 2004.



Thomas M. Blasing  
Notary Public - State of Ohio

My commission expires:  
May 4, 2004.

Estate of Roger D. Owensby, Jr.  
December 4, 2003

DAVID WILLIAM HUNTER, JR.  
VOLUME II

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

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ESTATE OF ROGER D. :  
OWENSBY JR., et al., :  
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Plaintiffs, : Case No. 01-CV-769  
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Continued videotaped deposition of DAVID  
WILLIAM HUNTER JR., a witness herein, called by the  
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Federal Rules of Civil Procedure, taken before me,  
Wendy Davies Welsh, a Registered Diplomate Reporter  
and Notary Public in and for the State of Ohio, at  
the offices of Helmer, Martins & Morgan Co. LPA,  
1900 Fourth & Walnut Centre, 105 East Fourth Street,  
Cincinnati, Ohio, on Thursday, December 4, 2003, at  
10:11 a.m.

Pages: 107 - 282



Estate of Roger D. Owensby, Jr.  
December 4, 2003

DAVID WILLIAM HUNTER, JR.  
VOLUME II

<p>Page 108</p> <p>1 APPEARANCES:</p> <p>2 On behalf of the Plaintiffs:</p> <p>3 Paul B. Martins, Esq. 4 Don Stiens, Esq. 5 Helmer, Martins &amp; Morgan Co. LPA 6 Suite 1900, Fourth &amp; Walnut Centre 7 105 East Fourth Street 8 Cincinnati, Ohio 45202 9 Phone: (513) 421-2400</p> <p>10 John J. Helbling, Esq. 11 The Helbling Law Firm, L.L.C. 12 3672 Springdale Road 13 Cincinnati, Ohio 45251 14 Phone: (513) 923-9740</p> <p>15 On behalf of the Defendants City of Golf Manor, 16 Stephen Tilley, Roby Helland and Chris 17 Campbell:</p> <p>18 Wilson G. Weisenfelder Jr., Esq. 19 Rendigs, Fry, Kiely &amp; Dennis 20 900 Fourth &amp; Vine Tower 21 One West Fourth Street 22 Cincinnati, Ohio 45202-3688 23 Phone: (513) 381-9200</p> <p>24 On behalf of the Defendants City of Cincinnati, Darren Sellers, and Jason Hodge:</p> <p>25 Geri Hernandez Geiler, Esq. 26 Assistant City Solicitor 27 Department of Law 28 Room 214, City Hall 29 801 Plum Street 30 Cincinnati, Ohio 45202 31 Phone: (513) 352-3346</p>	<p>Page 110</p> <p>1 Federal Rules of Civil Procedure, may be taken at 2 this time by the notary; that said deposition may be 3 reduced to writing in stenotype by the notary, whose 4 notes may then be transcribed out of the presence of 5 the witness; and that proof of the official 6 character and qualifications of the notary is 7 expressly waived.</p> <p>8 I N D E X</p> <p>9 Examination by: Page</p> <p>10 Mr. Martins . . . . . 111, 277</p> <p>11 Mr. Hardin. . . . . 258</p> <p>12 - - -</p> <p>13 E X H I B I T S</p> <p>14 Deposition Exhibit 85 . . . . . 120</p> <p>15 Deposition Exhibit 86 . . . . . 131</p> <p>16 Deposition Exhibit 87 . . . . . 152</p> <p>17 Deposition Exhibit 88 . . . . . 219</p> <p>18 Deposition Exhibit 89 . . . . . 221</p> <p>19 Deposition Exhibit 90 . . . . . 234</p> <p>20 Deposition Exhibit 91 . . . . . 236</p> <p>21 Deposition Exhibit 92 . . . . . 238</p> <p>22 Deposition Exhibit 93 . . . . . 244</p> <p>23 Deposition Exhibit 94 . . . . . 244</p> <p>24 Deposition Exhibit 95 . . . . . 245</p> <p>25 Deposition Exhibit 96 . . . . . 250</p> <p>26 - - -</p>
<p>Page 109</p> <p>1 APPEARANCES (Continued):</p> <p>2 On behalf of the Defendants Robert B. Jorg, 3 Patrick Caton, Jason Hodge, Victor Spellman and 4 Darren Sellers:</p> <p>5 Donald E. Hardin, Esq. 6 Hardin, Lefton, Lazarus &amp; Marks, LLC 7 915 Cincinnati Club Building 8 30 Garfield Place 9 Cincinnati, Ohio 45202 10 Phone: (513) 721-7300</p> <p>11 On behalf of David William Hunter Jr.:</p> <p>12 Jay Clark, Esq. 13 114 East 8th Street 14 Suite 400 15 Cincinnati, Ohio 45202 16 Phone (513) 587-2887</p> <p>17 Also present:</p> <p>18 Richard W. Grubb, Videographer</p> <p>19 Lisa Damstrom, Law Clerk 20 Helmer, Martins &amp; Morgan Co., L.P.A.</p> <p>21 Roger Owensby Senior</p> <p>22 Brenda Owensby</p> <p>23 Shawn Owensby</p> <p>24 - - -</p> <p>25 S T I P U L A T I O N S</p> <p>26 It is stipulated by and among counsel for the 27 respective parties that the deposition of DAVID 28 WILLIAM HUNTER JR., a witness herein, called by the 29 plaintiffs for cross-examination, pursuant to the</p>	<p>Page 111</p> <p>1 DAVID WILLIAM HUNTER JR.</p> <p>2 being by me previously duly cautioned and sworn, 3 deposes and says as follows:</p> <p>4 VIDEOGRAPHER: Time is 10:11 a.m. The 5 date is December the 4th. The year is 2003.</p> <p>6 We're on the record, sir.</p> <p>7 CONTINUED CROSS-EXAMINATION</p> <p>8 BY MR. MARTINS:</p> <p>9 Q. Officer Hunter, we're picking up where we 10 left off after November 6, your first couple hours 11 of your deposition. Remind you that you are still 12 under oath. Okay?</p> <p>13 A. Yes, sir.</p> <p>14 Q. All right. Have you talked with anyone 15 about your deposition on November 6th between 16 November 6th and today?</p> <p>17 A. No, besides my attorney.</p> <p>18 Q. Okay. Have you discussed the facts of the 19 Owensby case with anyone between November 6th and 20 today?</p> <p>21 A. No.</p> <p>22 Q. I want to direct your attention now to 23 November 7, 2000. I understand in the -- sometime 24 on that day you received an MTD message request for</p>



Estate of Roger D. Owensby, Jr.  
December 4, 2003

DAVID WILLIAM HUNTER, JR.  
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<p style="text-align: right;">Page 140</p> <p>1 said, "You can" -- he said -- he -- he said, "I 2 don't have anything on me," and he lifted his shirt. 3 And then he said, "You can pat me down." He said, 4 "I'm not -- I haven't done anything. I'm not 5 wanted. You can -- you can pat me down after you 6 run me through." 7 Q. When you told Officer Jorg and Officer 8 Hunter that, "That's him," you were standing at the 9 window -- excuse me -- did they say anything in 10 response? 11 A. You said Officer -- 12 MR. CLARK: You mean Caton? 13 A. Caton. It should have been Caton. You 14 said Officer Jorg and Officer Hunter. 15 Q. I'm sorry. I'm sorry. Officer -- when 16 you told Officer Jorg and Officer Caton that, 17 "That's him," when you were standing at the window, 18 did they say anything in response? 19 A. I don't remember if they said anything. 20 Q. You folks walk around to the front and 21 either Jorg or Caton start talking to Mr. Owensby 22 at -- at the -- the entrance; is that right? 23 A. Yes. 24 Q. Where are you at this point?</p>	<p style="text-align: right;">Page 142</p> <p>1 know whether or not he was carrying a nightstick? 2 A. I don't recall. 3 Q. A PR-24? 4 A. I don't recall if he was carrying one or 5 not. 6 Q. Do you know whether or not that night 7 Officer Jorg was carrying a collapsible PR-24 or a 8 regular full-size PR-24? 9 A. I don't remember what type he had. 10 Q. What happens next? 11 A. Officer Jorg and Officer Caton talk to Mr. 12 Owensby. They asked him questions. And then, like 13 I said, I -- I stood back, because I was still under 14 the contact-cover concept. If they both were going 15 to jump in and talk, then I just stood back as 16 cover. Because in actuality only one person should 17 have been talking. The other two should have been 18 standing back. 19 So once they were done doing their -- 20 their thing, they -- the -- the last thing one of 21 them asked, I believe it was Officer Jorg, was, 22 "Well, have you ever fought the police?" 23 Q. Fought? 24 A. Fought. Fought the police. And then Mr.</p>
<p style="text-align: right;">Page 141</p> <p>1 A. Standing just behind them. 2 Q. Be-- 3 A. Off to the left side. 4 Q. To the left of Jorg and Caton? 5 A. Just behind them, to the -- just slightly 6 to the left. I was -- they were right in the 7 doorway, both of them, because -- that's -- the 8 reason why I can't remember who was talking, because 9 at some point they both were talking, and so I don't 10 know who says what first. 11 Q. Okay. On Exhibit 86 there, would you draw 12 a circle indicating where Jorg, Caton and Owensby 13 were and put the number 2 in it. 14 A. Just a circle where they were? 15 Q. Where they were located. 16 A. Okay. All together? Just a circle all 17 together? 18 Q. Yeah. 19 A. Because -- okay. And put a number 2? 20 Q. Yes, sir. And then a number 3 with a 21 circle, indicating where you were. 22 A. (Witness complies.) 23 Q. When Officer Jorg walked over to that 24 entrance to stop and talk to Mr. Owensby, do you</p>	<p style="text-align: right;">Page 143</p> <p>1 Owensby said no. Then, after that, that's when I 2 walked up. Well, you know, I -- not really walked 3 up, I was there, but that's when I came in the 4 doorway just, you know, where I could make eye 5 contact with Mr. Owensby. And I -- and I asked him, 6 I said, "So, have you ever ran from the police?" 7 And then when he saw that, it was a 8 reaction on his face and then that's when he broke 9 for the door. 10 THE REPORTER: I'm sorry, "broke for 11 the" -- 12 THE WITNESS: The door. 13 A. Ran toward -- I mean, he was in the 14 doorway. And then it's like he tried to run past 15 us. 16 Q. When he broke to ran -- to run, did -- did 17 he push you or assault you in any way? 18 A. No. 19 Q. As he went past you, did -- did he get 20 completely past Officer Jorg and Caton before they 21 grabbed him? 22 A. I think he did. It happened so fast, but 23 I -- I think he actually just got -- because he went 24 by so fast. And then it was like, next thing you</p>

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1 A. Yes.  
2 Q. I want to show you what's previously been  
3 marked as Exhibit 21. This is a transcription of  
4 the audio on the tape that you've just seen, the  
5 videotape that you've just seen. I want to ask you  
6 some questions. And if you want to hear, in  
7 addition to what's there, I'll be happy to --  
8 A. Okay.  
9 Q. -- go through the tape, but what I want to  
10 direct you to is on the third page. It says that --  
11 at the top of the page, you say "Stopped for  
12 investigation of ... obstruction." And that's what  
13 we just talked about today, right?  
14 A. Okay.  
15 Q. Is that right?  
16 A. Yes.  
17 Q. Okay. And "I had on him, remember the  
18 hooded sweatshirt guy? Was working that day, sarge.  
19 The guy that ripped out uh."  
20 Now, who are you talking to when you're  
21 saying "Stopped for investigation of ...  
22 obstruction"?  
23 A. I was talking to Sergeant Browner, I  
24 believe.

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1 Q. And when you said "Stopped for  
2 investigation of ... obstruction," are you referring  
3 to the incident on September 27th?  
4 A. Yes.  
5 Q. Then if we go further downer -- down  
6 there, Sergeant Browner says, "What's he wanted  
7 for?"  
8 And Officer Jorg says, "He's wanted for  
9 trafficking resisting and assault on a police  
10 officer from a prior."  
11 We've already established that he was not  
12 wanted for trafficking, right?  
13 A. Right.  
14 Q. And he was not wanted for assault on a  
15 police officer?  
16 A. Right.  
17 Q. And was he wanted for resisting or just  
18 obstruction?  
19 A. Obstructing.  
20 Q. So he wasn't wanted for resisting either?  
21 And then it says, "But we didn't know his  
22 name at the time. Now we got him ID, he's wanted  
23 again for assault on a police officer" and  
24 "resisting."

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1 Did you see on the night of November 7,  
2 2000, Mr. Owensby assault any police officer?  
3 A. No.  
4 Q. He certainly didn't assault you?  
5 A. No.  
6 Q. In fact, he never touched you as he went  
7 by.  
8 A. No.  
9 Q. Is that correct?  
10 A. Yes.  
11 Q. And the resisting would be -- well, what  
12 do you take the resisting to mean? Or did you think  
13 he was resisting?  
14 A. Yeah, that night.  
15 Q. And how was he resisting?  
16 A. By not allowing himself to be arrested.  
17 So he was resisting arrest. He was in a defensive  
18 posture, but he was ordered to give his hands and  
19 his wrist and allow us to handcuff him, and he did  
20 not. He didn't comply with our orders.  
21 Q. Now -- now, while Officer Jorg is saying  
22 all of this to Sergeant Browner, you're standing  
23 there, right?  
24 A. Yes.

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1 Q. Is there a reason --  
2 A. I think I'm standing there.  
3 Q. I'm sorry?  
4 A. I said I think I'm still standing there.  
5 Q. Okay.  
6 A. I don't know if I walked away or not.  
7 Q. Is there -- well, you see at the end of  
8 Officer Jorg's talking --  
9 A. Yeah, down here. Okay.  
10 Q. -- you start talking again?  
11 A. Yeah. I'm still there.  
12 Q. So --  
13 A. That's what I was trying to get down to,  
14 that part. Yeah.  
15 Q. Okay. Is there a reason why you did not  
16 correct Officer Jorg as to the prior, where he told  
17 Sergeant Browner that Mr. Owensby was wanted for a  
18 prior trafficking and assault on a police officer?  
19 A. No, no reason other than when he was  
20 telling her whatever he was telling her, I wasn't  
21 really paying complete attention of what the charges  
22 were that he was saying -- that he was saying,  
23 because I already had it in my mind, I already knew  
24 in my mind what the charges should have been. So I

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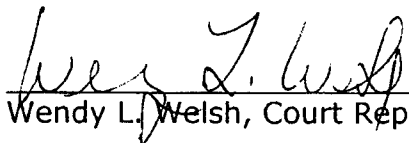
<p style="text-align: right;">Page 212</p> <p>1 wasn't really tuned in to hear what he was saying. 2 I knew what the charges should have been. 3 Q. And in your mind, the prior charges should 4 have been obstructing -- 5 A. And -- 6 Q. -- and jaywalking? 7 A. Right. 8 Q. And when he said -- when Officer Jorg then 9 says "he's wanted again for assault on a police 10 officer to resisting," again, is there a reason why 11 you didn't say something to the effect of he's not 12 wanted for assault on a police officer? 13 A. Where's that at? 14 Q. Third line in what -- in Jorg's -- see 15 Jorg says, "He's wanted for trafficking 16 resisting" -- 17 A. Trafficking, resisting. 18 Q. -- "assault on a police officer from a 19 prior." And we just talked about that. 20 A. Okay. 21 Q. He says, "But we didn't know his name at 22 the time." 23 A. Uh-huh. 24 Q. "Now we got him ID, he's wanted again for</p>	<p style="text-align: right;">Page 214</p> <p>1 "that's when I said oh, so when was the last time 2 you ran from the police." And "That's when we" -- 3 And then Sergeant Watts breaks in and 4 says, "Did anyone strike him or spray?" And then he 5 says, "Just sprayed him." 6 And Jorg says, "I don't know who sprayed 7 him. I had his head wrapped almost the whole time." 8 Is there a reason why, at that point when 9 Sergeant Watts asked about if anybody struck him, 10 struck Mr. Owensby, why -- 11 A. Uh-huh. 12 Q. -- you didn't say yeah, somebody struck 13 him? 14 A. Yeah, there was a reason. 15 Q. What was the reason? 16 A. The reason is I wasn't going to talk out 17 against two other officers in front of them at that 18 particular time. I was going to take Officer -- I 19 mean Sergeant Watts off to the side and tell him 20 what happened. 21 Q. Did you ever get that opportunity? 22 A. No. 23 Q. On the -- the last page Officer Jorg says, 24 he had -- "I had my hand across his forehead, trying</p>
<p style="text-align: right;">Page 213</p> <p>1 assault on a police officer to resisting." 2 A. Uh-huh. 3 Q. And my question is, is there a reason why 4 you did not correct Officer Jorg as to assault? 5 A. On that -- that new charge? 6 Q. As to the -- the charge for that night of 7 assault on a police officer. 8 A. Okay. Because I didn't know if he, you 9 know, felt like -- I didn't know if I missed 10 something where he -- they -- him or Caton got 11 assaulted. 12 There was nothing that I saw that I would 13 say that yeah, you know, this person -- if they made 14 a claim or if they said they got assaulted and I was 15 called to court to testify, there was nothing I 16 could say to substantiate that they had been 17 assaulted. 18 So to me, no, he that -- not-- nobody got 19 assaulted. But if they claimed an assault, I -- I 20 can't say that they didn't get assaulted as far as 21 like if that was their claim that night. But in 22 testifying, I can say no, I didn't see them get 23 assaulted. 24 Q. At the bottom of the page you -- you say,</p>	<p style="text-align: right;">Page 215</p> <p>1 to hold him down to the ground. I ... had one of 2 his arms as a restraint move. I didn't throw 3 anything. And then uh, he dropped his head. As I 4 was" turning "to hold him down, he brought his head 5 up. I had to push it back down and he hit his head 6 on the ground. It wasn't intentional move. I 7 didn't go to hit his head on the ground. Sarge, I'm 8 gonna, well I'm" -- 9 Did you see what Officer Jorg is 10 describing here as pushing his head down on the 11 ground? 12 A. I didn't see that. 13 Q. You did not? 14 A. No. 15 Q. On -- going back to page 3, Officer Jorg's 16 statement, after he says in the third line, "wanted 17 again for assault on a police officer to resisting," 18 and then he says, "We uh, well we're" over -- "over 19 there doing investigation waiting for these guys," 20 do you know who he's talking about as far as 21 "waiting for these guys"? 22 A. That night? 23 Q. Yeah. I guess this is -- this is the 24 night of November 7.</p>

AFFIDAVIT

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STATE OF OHIO :  
COUNTY OF HAMILTON : SS  
:

I, Wendy L. Welsh, Notary Public in and for the State of Ohio, do hereby state that the transcript of the deposition of DAVID WILLIAM HUNTER, JR., deponent herein, having been submitted to said deponent for review and signature, has not been signed within the thirty (30) day period allowed under the Federal Rules; said deposition to now have the same force and effect as though signed.

  
Wendy L. Welsh, Court Reporter

Sworn to before me this 27<sup>th</sup> day of January, 2004.



Thomas M. Blasing  
Notary Public - State of Ohio

My commission expires:  
May 4, 2004.